

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DOCKET NO. 3:07CR79-W

UNITED STATES OF AMERICA,)
)
 v.)
)
(1) PATRICK SCHWENKE)
)

ORDER

THIS MATTER is before the Court on the government's motion, pursuant to Rules 32.2(b)(4)(B) and 36 of the Federal Rules of Criminal Procedure, to correct two clerical errors in the record.

On June 27, 2007, Magistrate Judge Horn signed a Consent Order and Judgment of Forfeiture as to assets of the defendant, including seized currency as follows:

"1. \$83,000.00 in cash recovered from Patrick Schwenke's residence."

The government represents that this amount should have been \$83,150, which was the actual amount of currency seized from the defendant's residence on March 22, 2007.

In his plea agreement, the defendant agreed to forfeit "all items seized during the investigation . . . , including, but not limited to, all assets specifically listed in the Bill of Indictment and all assets listed in any separate list or consent order signed by the defendant." Plea Agreement, ¶ 26. The currency in question was listed both in the indictment and in the consent order, albeit in the amount of \$83,000 rather than \$83,150. However, since \$83,150 was one of the "items seized during the investigation" within the meaning of the plea agreement, defendant has thereby consented to the forfeiture of the correct amount.

In the judgment against this defendant, filed herein on March 5, 2009, at page 5, it is

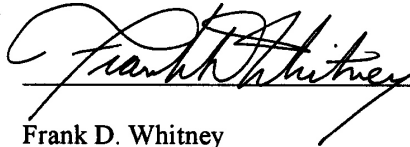
stated that the defendant shall forfeit property “[p]ursuant to Final Order of Forfeiture file [sic] 11/12/08.” The final order states the amount of \$83,000. Consequently, both the final order and the judgment are in error.

The Court finds that both of these errors are clerical errors within the meaning of Fed. R. Crim. P. 32.2 (b)(4)(A) and 36, and thus may be corrected “at any time.”

IT IS THEREFORE ORDERED:

1. The Final Order and Judgment Confirming Forfeiture filed on November 12, 2008, is amended by striking the term “\$83,000.00” and inserting in its place the term “\$83,150.00.”
2. The Judgment filed on March 5, 2009, is amended by inserting the words “as amended” after “Pursuant to Final Order of Forfeiture file 11/12/08.”

Signed: May 5, 2010


Frank D. Whitney
United States District Judge

